REMARKS

Claims 12-23 and 26-34 are pending in the Application, all of which stand rejected by the Office Action mailed December 02, 2008. No claims are amended by this response. Claims 12 and 16 are independent claims, while claims 13-15 and 26-31, and 17-23 and 32-34, depend either directly or indirectly from independent claims 12 and 16, respectively.

Applicants appreciate the Office Action's withdrawal of previous rejections under 35 U.S.C. §§ 101, 102, and 112. Applicants, however, respectfully traverse the newly advanced grounds of rejection, and respectfully request reconsideration of claims 12-23 and 26-34, in light of the following remarks.

Applicants' representative Kevin Borg appreciated the opportunity to speak with Examiner Faris Almatrahi by telephone on March 3, 2009 in response to Mr. Borg's call of February 27, 2009, regarding the Application. Examiner Almatrahi indicated that he was unwilling to speak at the time of the call, but would be available for an interview following Applicants' filing of a Request for Continued Examination. Examiner Almatrahi graciously agreed to speak with Mr. Borg about the Application, before preparation of a subsequent Office action, on or about April 3, 2009.

Rejection of Claims Under 35 U.S.C. §103

Claims 12-23 and 26-34 stand rejected under 35 U.S.C. §103 as being unpatentable over Thurston *et al.*, U.S. Publication No. 2003/0217193 (hereinafter "Thurston") in view of Hind *et al.*, U.S. Patent No. 7,069,452 (hereinafter "Hind"). Applicants respectfully traverse the rejection of those claims as discussed below.

Claim 12 And Its Dependent Claims Are Allowable Over The Cited Art

Applicants respectfully traverse the obviousness rejection of claim 12 and its dependent claims. Applicants respectfully submit that Thurston and Hind, either alone or in combination, do not teach, suggest, or otherwise render obvious the presently

claimed subject matter, including at least "populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed" and "managing the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the updating information."

Beginning with "populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed," the Office Action recognizes that "Thurston does not explicitly disclose a network comprising an update store comprising a repository of update packages having lifecycles managed by the lifecycle management component." (*See* Office Action at p. 3.) However, the Office Action asserts that "Hind discloses a network comprising an update store comprising a repository of update packages having lifecycles managed by the lifecycle management component (Figure 10, Column 18 line 46 – Column 19 line 2)." (*See id.*) Applicants respectfully traverse that assertion, and respectfully submit that Hind does not disclose a lifecycle management component or update packages having lifecycles managed by a lifecycle management component, let alone populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed as claimed. The cited portion of Hind (namely 18:46 – 19:2, which describes the cited Figure 10), reads as follows:

> FIG. 10 is a block diagram of a system which may provide for the distribution and application of firmware updates according to embodiments of the present invention. A firmware update repository 700 may be provided which includes the firmware update images and/or the corresponding certificates associated with a firmware update. The firmware update repository 700 may be separate from or incorporated with a firmware distribution function 702 which allows for the distribution of firmware updates from the firmware update repository 700 to a plurality of updateable devices 706 and 706´ which may be configured and operate as described herein. The firmware update repository 700 and the software distribution function 702 may be servers or other such devices known to those of skill in the art for storing and distributing software. The updateable device 706 and 706´ may be any type of

computing device capable of carrying out some or all of the operations described herein. The firmware updates may be distributed over a network 704 which may be the Internet or an intranet. Alternatively, the firmware may be distributed via removable storage media such as diskettes or CD-ROMs. As will be appreciated by those of skill in the art in light of the present disclosure, the embodiment illustrated in FIG. 10 may provide a new method of doing business.

While Applicants note that Fig. 10 and the cited text do mention a network and a "firmware update repository 700," the cited portion of Hind is silent with respect to lifecycle management, let alone with respect to "populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed." According to Hind, "A firmware update repository 700 may be provided which includes the firmware update images and/or the corresponding certificates associated with a firmware update." (Hind at 18:48-51.) A mere mention of firmware images and corresponding certificates is quite different from the presently claimed subject matter for a number of reasons. For example, "the updating information" as claimed which is used to populate the update store is claimed as "...generating updating information having a lifecycle for updating the firmware to a particular version of the firmware." The cited portion of Hind only mentions "firmware update images" and "corresponding certificates." Such a disclosure is silent with respect to updating information having a lifecycle as claimed. In any event, the cited portion of Hind is silent with respect to management of lifecycle information. In contrast, claim 12 explicitly requires that the update store "acts as a repository of update packages whose lifecycle may be managed." Hind makes no mention of such management, let alone teaches, suggests, or otherwise renders obvious an update store that acts as a repository for update packages whose lifecycle may be managed. Hind's "firmware update repository" merely stores "firmware update images and/or corresponding certificates associated with a firmware update." As such, Applicant respectfully submit that Hind does not teach populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed.

In addition, Applicants respectfully submit that the cited combination cannot teach "populating the updating information in an update store that acts as a repository of

update packages whose lifecycle may be managed" as it does not teach "managing the lifecycle of the updating information..." in the first place, as further discussed below.

Paragraphs [0052] and [0053], cited by the Office Action as disclosing "managing the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the updating information," (*see* Office Action at p. 3) read as follows:

> [0052] Control proceeds to block 704, where the device independent firmware update utility 302 requests the device dependent plug-in module 306 to confirm that system wide constraints are being satisfied before proceeding with the firmware installation. The system wide constraints may be distributed within the firmware update application 200 or the firmware package 108a, and may include constraints such as the version of the operating system, the amount of available storage, etc., that may need to be satisfied before installing the binary firmware image 404. The device dependent plug-in module 306 receives (at block 706) the request to verify the system wide constraints. The device dependent plug-in module 306 verifies (at block 708) the system wide constraints. If the system wide constraints are satisfied then the status is said to be "verified." In contrast, if the system wide constraints are not satisfied then the status is said to be "not verified." The device dependent plug-in module 306 sends (at block 710) the status on the verification of the system wide constraints to the device independent firmware update utility 302.
>
> [0053] At block 712, the device independent firmware update utility 302 receives the status on the verification of the system wide constraints from the device dependent plugin module 306. If the system wide constraints are "not verified" (at block 712), then control proceeds to block 714 where the device independent firmware update utility 302 performs cleanup operations and exits. Cleanup operations may include closing files that are open, disposing of pointer data structures, closing network connections, etc. If at block 712 the device independent firmware update utility 302 receives a "verified" status for the system wide constraints, then control proceeds to block 716 where the device independent firmware update utility 302 passes the device dependent plug-in module 306 the list of properties package 402 containing the dynamic constraints, and requests the device dependent plug-in module 306 to

discover matching hardware devices 310, 311 for firmware update.

Applicants respectfully submit that the above cited portions of Thurston do not disclose "managing the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the updating information." For example, a mere discussion of <u>verification</u> of system-wide constraints of a firmware image being installed does not disclose managing the lifecycle of the updating information. This is even more so for the "system-wide constraints" identified by Thurston as "such as the version of the operating system, the amount of available storage, etc., that may need to be satisfied before installing the binary firmware image 404," none of which are related to the lifecycle of updating information. Further still, Applicants respectfully submit that such <u>system-wide</u> constraints are, by definition, explicitly related to an entire <u>system</u>, and are not related to updating information, let alone to the lifecycle of updating information. In any event, even if Thurston elsewhere disclosed a state in the lifecycle of updating information, such a disclosure still would not disclose <u>managing the lifecycle of the updating information</u> by <u>enabling and disabling distribution</u> of the updating information as claimed, let alone management of the lifecycle of update information that was populated in an update store. Such a disclosure does not teach management of the lifecycle of updating information as claimed. As a result of the foregoing, Applicants respectfully submit that the cited portion of Thurston does not teach, suggest, or otherwise render obvious <u>managing the lifecycle of the updating information by enabling and disabling distribution</u> <u>of the updating information</u> according to a state in the lifecycle of the updating information as claimed.

For the reasons discussed above as well as those discussed in previous submissions, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness for claim 12 or any claim that depends therefrom. Applicants further submit that the combination of Thurston and Hind does not teach, suggest or otherwise render those claims obvious, and that those claims are allowable over the cited art.

Applicants further submit that claims dependent from claim 12 are further allowable over the cited art for additional reasons. For example, claim 15 was amended by the previous response to clarify exemplary patentably distinct aspects of that claim, and recites *inter alia*, retrieving the requested updating information from the update store. The Office Action rejects claim 15, but does not address anywhere in its explanation of that rejection claim 15's requirement of "retrieving the requested updating information from the update store." Instead, the Office Action merely states, "Regarding claim 15, Thurston discloses a method further comprising receiving requests for updating information (Figure 7); facilitating downloads of the requested updating information (Figure 7); verifying reception of the downloaded updating information (Figure 7); and utilizing the downloaded information to update firmware in the electronic device (Figure 7)." (*See* Office Action at p. 4; underlining in original.) As such, Applicants respectfully submit that the Office Action has failed to address that aspect of claim 15, let alone identify a teaching in the prior art disclosing that aspect of claim 15, and therefore fails to present a *prima facie* case of obviousness for claim 15 for this additional reason as well. Nor did the Office Action address Applicants' previous discussion of the shortcomings of Thurston with respect to claim 15 (*see* Amendment dated August 19, 2008, at p. 12-13). To the extent any future Office Actions maintain the rejection of claim 15, Applicants respectfully request that claim 15's requirement of "retrieving the requested updating information from the update store" be addressed, that Applicants' previous discussion of Figure 7 of Thurston be responded to, and that a more specific identification of any purported teachings of the prior art than a vague, unexplained reference to "Figure 7" of Thurston for each element be provided. (Applicants additionally submit that a mere mention of a figure, without explanation, does not satisfy the Office Action's burden of establishing a *prima facie* case of obviousness, and additionally request a specific citation and explanation for the asserted disclosure of the elements of, for example, claims 17, 19, 20, 21, 28, 29, and 34, to the extent any rejections for those claims are maintained.)

Claim 16 And Its Dependent Claims Are Allowable Over The Cited Art

Applicant additionally respectfully traverses the rejections of claim 16 and its dependent claims. In rejecting claim 16, the Office Action cites to and relies on the same portions of Thurston as the Office Action cites to and relies on to reject claim 12. (*See* Office Action at p. 2-3.) Thus, for at least similar reasons to those previously discussed in connection with claim 12, Applicants respectfully submit that Thurston and Hind, either alone or in combination, do not teach, suggest or otherwise render obvious, at least, either "the network having a lifecycle management component that manages the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the updating information" or "the network comprising an update store comprising a repository of update packages having lifecycles managed by the lifecycle management component." As such, Applicants respectfully submit that the combination of Hind and Thurston, either alone or in combination, do not teach, suggest, or otherwise render obvious claim 16 or any of its dependent claims.

In the Amendment dated August, 19, 2008, Applicants pointed out the failure of the Office Action mailed May 28, 2008 to address the requirements of claims 17 and 20 including "a management console employed for lifecycle management of the electronic devices." The December 2, 2008 Office Action similarly, once again, fails to address those aspects of claims 17 and 20, let alone identify any teaching in the prior art disclosing that aspect of the claimed subject matter. Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness for claims 17 and 20 for this additional reason. To the extent any future Office Actions again assert such a rejection of claims 17 and 20, Applicants respectfully request a specific identification of a teaching in the prior art disclosing those aspects of claims 17 and 20.

With further regard to claim 19, for example, Applicants note that claim 19 recites "wherein the network further comprises a lifecycle management component that manages the lifecycle of the electronic devices." The Office Action asserts this is

disclosed by Thurston at Figure 3. (*See* Office Action at p. 4.) As also indicated above, Applicants respectfully submit such a vague citation to an entire figure does not provide the explanation required to present a *prima facie* case of obviousness. Applicants have examined Figure 3, and have not been able to locate a lifecycle management component that manages the lifecycle of the electronic devices. Applicants note that Figure 3 of Thurston includes blocks labeled "hardware device 310," "hardware device 311," "device driver 308," and "device dependent plug-in module 306." It is not clear to Applicants how any of these disclose lifecycle management of anything, let alone managing the lifecycle of electronic devices, further still let alone a lifecycle management component as claimed. Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness for claim 19 as well.

Similarly, for example, with respect to claims 28 and 29, the Office Action merely cites to Thurston's "Figure 8" as disclosing "a method further comprising updating state information for the particular version of updating information in a database of lifecycle information for update information." (*See* Office Action at p. 5.) (Applicant further notes that the Office Action appears to only address the recited language of claim 28, and does not address the subject matter recited by claim 29, which recites "updating state information in a <u>database of lifecycle information for the one or more electronic devices</u>.") Applicants note that Fig. 8 of Thurston "illustrates logic implemented in a framework for installing firmware, where the logic may provide for interactive user input, in accordance with certain described implementations of the invention." (Thurston at [0019].) Applicants have examined Figure 8, and are unable to identify a database, or updating state information for a particular version of updating information, let alone the subject matter claimed by claims 28 and 29. Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness for claims 28-29 for these additional reasons as well.

Conclusion

In general, the Office Action makes various statements regarding claims 12-23 and 26-34, and the cited references, that are now moot in light of the above. Thus, Applicants will not address such statements at the present time. However, Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicants believe that all of claims 12-23 and 26-34 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicants invite the Examiner to contact the undersigned at (312) 775-8000 for an interview.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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